

Making appropriate parenting arrangements in family violence cases, 2023 (summary and supplemental materials)^{1,2}

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Background

This paper is a revision of the 2005 Justice Canada publication entitled *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices* (Jaffe et al., 2005). The original paper was written to assist lawyers, judges and other practitioners in dealing with the difficult issues that arise in making appropriate post-separation parenting arrangements in cases where there are family violence issues. This updated paper captures the significant changes in the field including major legislative reforms. Amendments to the *Divorce Act* that came into force in March 2021 include a comprehensive definition of family violence and recognize the importance of coercive control. These amendments made the federal statute more consistent with provincial and territorial laws that govern parental separation and that already recognized the importance of family violence.

The field has also changed by better recognizing diverse realities in Canada. This paper uses a gender-based intersectional framework as a lens to analyze the complex human experience of family violence, requiring consideration of such factors as gender, sex, gender expression, sexual orientation, race, ethnicity, immigration status, cultural background, life experiences, nationality, language, spiritual beliefs, disability, economic status, and education. There have been changes in the composition of the Canadian population, with an increasingly

¹ The views expressed in this report are those of the authors and do not necessarily represent the views of the Department of Justice Canada. The full report will be made available in Fall 2023 at: [Reports and Publications \(justice.gc.ca\)](https://www.justice.gc.ca/reports-publications)

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large number of racialized and immigrant families, many of whom have family traditions and cultural understandings that differ from the Eurocentric traditions that have been dominant in Canada. Understanding the unique context of individuals' lives helps family justice professionals to better understand the barriers in the justice system and make it more inclusive and transparent.

Legislation, policies, and professional practices have also changed to better recognize and respond to the impact of trauma on survivors of family violence and their children. Trauma has a direct impact on parenting and children's adjustment post-separation. Family court judges, lawyers and court-related professionals need to have trauma- and violence-informed practices to better meet the needs of parents and children.

Findings

Most parents work out their parenting responsibilities with minimal court intervention. Many lawyers, mediators, and counsellors encourage parents to work together to develop parenting arrangements that are best for their children. Even prior to the recent legislative changes, there was a trend to stop using the archaic legal terminology of "custody" and "access," which have proprietary connotations and tend to promote a "winner" and "loser" mentality. Courts have now adopted concepts such as "parenting time" and "parenting plans" to facilitate making cooperative post-separation arrangements.

In cases where family violence has been identified, attention must be given to parenting arrangements to ensure safety for the child and the victim of the abuse. Assessing the validity and context of family violence allegations is critical for making appropriate post-separation parenting arrangements. In cases where there are ongoing family violence concerns, court involvement is usually necessary to support the safety of the victim and children. This safety may be achieved through shorter visits, supervised parenting time or the exchange of care, or even a suspension of contact between the perpetrator and their children. The responses need to take account of the potential harm that perpetrators present to the children and the other parent.

There is no doubt that there is a heightened focus on family violence issues in family courts across Canada. There are ongoing efforts by many, including governments, law societies, professional organizations, and the National Judicial Institute to ensure educational opportunities for lawyers and judges to increase awareness and understanding of family violence and the legislative reforms aimed to address it. Similar professional education programs are being offered for other family justice professionals, including mediators, assessors, and mental health professionals. There are also ongoing efforts to educate members of the public, in particular victims and perpetrators of family violence, and to improve access to services. The focus on family violence will have to be matched by growing resources needed to provide legal, social, and mental health services to support family members as well as ongoing research to better guide family justice professionals on the best interventions and parenting plans for these challenging circumstances.

Key findings

1. Family violence is a serious problem across Canada that impacts adult victims and children in terms of their physical and psychological well-being. Living with family violence can have lifelong effects. Women in heterosexual relationships are most at risk of this violence in terms of incidence and consequences such as living in fear, injury and death. Family violence is also a significant concern in same-sex and transgender relationships.
2. Coercive control has become a critical concept in law, research and professional practice. Coercive control refers to a pattern of abuse over time that maintains the power of one intimate partner over another through a variety of means such as threats, intimidation, and emotional, sexual and financial abuse. Patterns of coercive control may be more difficult to recognize than physical abuse, which is more readily

understood and identified. The identities of individuals in families influence the ways in which coercive control may be exerted and the opportunities for victims to seek and receive help. Coercive control can have a profound impact on both adult victims and children exposed to this behaviour.

3. Intersectional considerations are required to determine the most appropriate parenting plan in the context of family violence. One needs to consider an individual's life circumstances across diverse cultural contexts. Consideration of such factors as economic class and resources, immigration status, race, ethnicity and Indigeneity, religion, and disability is critical. A one-size-fits-all focus on post-separation parenting is not appropriate for family violence cases. A differentiated assessment and intervention strategy are required in separation cases involving family violence. Responses to family violence cases must take account of the nature of the family violence, the timing of disclosures, and the availability of resources to promote safety, healing, and accountability, as well as the intersectional contexts of victims and perpetrators.
4. Although parental separation is often essential for the long-term protection of victims and children, separation can increase the immediate risks of serious harm or death from family violence for adult victims and children. Intervening in family violence cases requires a recognition of the harm to children in these circumstances. Children may be traumatized by direct and indirect exposure to family violence.
5. All cases of divorce and separation need to have an initial screening for family violence by family justice professionals, as well as ongoing assessment of evolving family violence issues. Where there are family violence concerns, it is important that courts and professionals identify the risks for ongoing abuse and assess power imbalances, including the safety of abuse victims in any negotiation process. Professionals must not pressure victims into a dispute resolution process and settlements that may place them at further risk of harm.
6. Specific considerations for decision-making about post-separation parenting when there are findings of family violence include the following:
 - a) The parenting of the abusive parent needs to be addressed. There may be an ongoing impact of a parent who has perpetrated family violence on the victim and children, even after separation and a cessation of any acts of abuse. Ongoing use of coercive control must be recognized and considered in post-separation parenting arrangements.
 - b) Findings of family violence are critical to understanding the parenting decisions of the victim parent. Family violence can impact the parenting confidence and autonomy of the victim parent for many years after separation. In situations where there are ongoing or serious family violence concerns, there should be a presumption that parental decision-making responsibility will be given to the victimized parent.
 - c) Findings of family violence are usually a contra-indication of a co-parenting arrangement after separation. Co-parenting cannot take place in the context of continuing fear and trauma from a history of family violence.
 - d) Supervised exchanges or supervised parenting time may be essential for adult and child victim safety. Such safety measures should continue when there is an ongoing risk of family violence and coercive control. Ending these arrangements should be conditional on ending patterns of abuse or control towards the victim parent.
7. Significant caution should be used when assessing claims of parental alienation when made against parents who may be victims of family violence. Parents who raise concerns about family violence may be seen as making false or exaggerated claims of abuse to further their desire to not share their children.

There are legitimate issues related to proof of claims of family violence, but denial and minimization of abuse by genuine abusers is more common than false or exaggerated claims of intimate partner abuse by alleged victims. There is a need for proper assessment, and investigation into all reports of family violence is essential to ensure that appropriate parenting arrangements are made.

8. Family courts may fail to recognize or misinterpret survivors' ways of responding to violence and the influence of systemic, structural violence on families, including the influence of violence on decisions that parents make in caring for their children and in acting to protect them from family violence. The use of family violence experts, assessment tools, and trauma-informed practices are essential for navigating these complex systems and should be relied on by family courts and practitioners.
9. Raising concerns about family violence can be misused against a victim parent as evidence of poor parenting capacity or unwillingness to engage in "friendly" parenting. Significant caution should be used in making negative inferences about a parent as a result of alleging family violence by the other parent, communicating fear for the children as a result of family violence, or taking measures to protect the child from an abusive parent. Seeking help for family violence may well increase a victim's financial and emotional costs in the court process, but may be essential to protect their children. Lawyers, judges, and family justice professionals need to be aware that abusers may misuse the court process to continue patterns of coercive control in their intimate relationship in court proceedings. In some cases, this behaviour may be tantamount to litigation abuse and an attempt to exhaust the victim, financially and emotionally.
10. Findings of family violence should lead to a differentiated approach to parenting arrangements depending on the severity and history of family violence and coercive control, the timing of the disclosures (e.g., temporary vs. more stable plan) and the resources available to address safety for the adult victim and children. These arrangements may vary according to the potential need for restrictive parenting time. These arrangements may include co-parenting, parallel parenting, supervised exchanges, supervised parenting, or no parenting time.

Contents of the full report

The full report, published separately, is divided into six sections. The first section introduces some key concepts related to the analysis in the report, including intersectionality and the importance and limitations of a gender-based analysis. The next section provides an overview of the literature on family violence, followed by sections discussing post-separation parenting arrangements in cases involving family violence. The reader is provided with a model for assessment and intervention strategies in cases of family violence and child-related parenting disputes. A differentiated model for best practice is outlined in the text, together with a summary diagram to illustrate the host of factors to consider in matching parenting arrangements to families in which violence is a factor. The concluding section outlines the implications of adoption of this model for policy, legislation and practice in the family court and court-related services.

Supplement # 1: Differentiated approaches to parenting arrangements after family violence

Each family is unique, and there is not a one-size-fits-all model for parenting arrangements, especially for family violence cases. Parenting arrangements after separation always need to be tailored to address the needs of the children, the abilities of the parents, and their ability to parent together. Family violence allegations and findings require special considerations to address the best interests of the children and ensure the safety of children and victimized parents.

The diagram below outlines a framework to approach parenting arrangements in cases where there are family violence issues. At one end of the continuum, there are cases where there is no doubt that a parent has perpetrated a pattern of abusive coercive controlling behaviour over time, with little remorse or investment in treatment; in these cases, that parent should have either no parenting or limited supervised parenting by highly trained professional staff. At the other end of the continuum, there is an isolated incident of spousal abuse that is out of character, accompanied by genuine remorse, no ongoing fear or trauma, and evidence of a current ability to respect and value the contribution of the other parent; in this case, a co-parenting arrangement may be appropriate. In between these extremes, there are multiple possibilities for matching parenting arrangements to families.

Multiple factors need to be considered, such as the nature and severity of the family violence and the impact on parents and children. A critical consideration is the resources available to support and protect victims and offer remediation and supervision for abusers. The stage of proceedings and available information to professionals and the court are also important. For example, the situation at the time of separation, which is often a time of particular risk and vulnerability for family violence, may be very different from the situation at the time of a possible trial a year or more after separation. At the time of trial, there may be much more information available from multiple professionals and a post-separation pattern of behaviour to consider.

Co-parenting

Co-parenting refers to an arrangement in which separated parents cooperate relatively closely in all aspects of raising their children. This arrangement may often roughly approximate the pre-separation pattern of care for the children, with both parents actively involved in the lives of their children, sharing care and information, and cooperatively problem-solving the normal challenges of parenting as they arise. Co-parenting requires two parents who can maintain a civil and child-focused relationship post-separation. There should be mutual trust and respect that allows for constructive communication between parents. Co-parenting is contra-indicated by continuing family violence, including concerns about continuing effects of coercive controlling behaviour on victims.

Parallel parenting

Parallel parenting describes an arrangement where each parent is significantly involved in the children's lives, but the arrangement is structured to minimize contact between the parents. Each parent makes day-to-day decisions independently of each other when the children are in their care, and responsibility for major decisions, like education, is allocated to one parent. Parallel parenting is generally only appropriate for children if, despite their conflicts, the parents have fundamentally similar ideas and expectations about parenting and child-rearing. Whether a parallel parenting arrangement might be appropriate in the aftermath of violence towards children, or an adult partner generally requires a careful assessment by a professional with a background in family violence cases. Factors critical to this determination include whether the perpetrator of the violence has taken responsibility and successfully completed an intervention; whether the children have received services and are

experiencing ongoing symptoms of trauma or distress; and the developmental stage of the children. A clinical finding of ongoing risk to children or the other parent clearly contra-indicates a parallel parenting arrangement.

Primary residence parenting

Primary Residence Parenting is somewhat analogous to what occurred before the 2021 *Divorce Act* reforms when one parent had custody of the children, and the other parent had a limited access schedule. Primary residence parenting arrangements place the child primarily in the care of one parent while the other parent has a more limited role. This recognizes that there are limitations to the ability of the other parent to make positive contributions to the child, possibly due to ongoing concerns about that parent's use of coercive control, an inability to prioritize the child's needs over their acrimony toward the primary parent, or serious concerns about their parenting capacity, mental health, or substance use. A primary residence parenting arrangement assumes that there are no safety concerns that would require supervision for exchanges or supervision of the parenting time. It also assumes that the parenting time is not being used to undermine the primary residence parent. This type of arrangement may work best when the family violence by one parent has been acknowledged, there is an intervention plan in place to address the past conduct and its impact, and safety concerns are adequately addressed.

Supervised exchange

Supervised Exchange involves transferring children from the care of one parent to the other under the supervision of a third party. The supervision can be informal, for example, by a family member, neighbour, or volunteer, or by using a public venue for the exchange, such as the parking lot of a fast-food restaurant or, if necessary, a police station. The supervision can also be formalized through the use of a designated professional, such as a childcare worker, social worker, or agency. The history of family violence in these cases raises enough concern to keep the victim parent away from the abusive partner, but the children are deemed not to be at risk.

Supervised parenting time

Supervised Parenting Time is an arrangement designed to promote safe contact with a parent who presents as a risk due to a range of behaviour, from physical or emotional abuse to possible abduction of the child. It may also be appropriate when a child has fears of a parent, for example, because of having witnessed the parent perpetrate abuse or having been personally abused by that parent, but still wants to maintain a relationship. Supervised parenting time should only be undertaken if it is believed that a child will benefit from a parent maintaining an ongoing role in the child's life. Like supervised exchanges, supervised parenting time may vary in formality from extended family or volunteers to a specialized centre with professional staff with expertise in these issues. Related to this is the use of therapeutic supervised parenting time, where a mental health professional is involved in trying to improve a troubled parent-child relationship through counselling and support during this parenting time. Supervised parenting time should normally be a short-term solution to concerns about child safety, though in some cases, it may continue for years where these concerns are ongoing, but the child continues to enjoy seeing the parent.

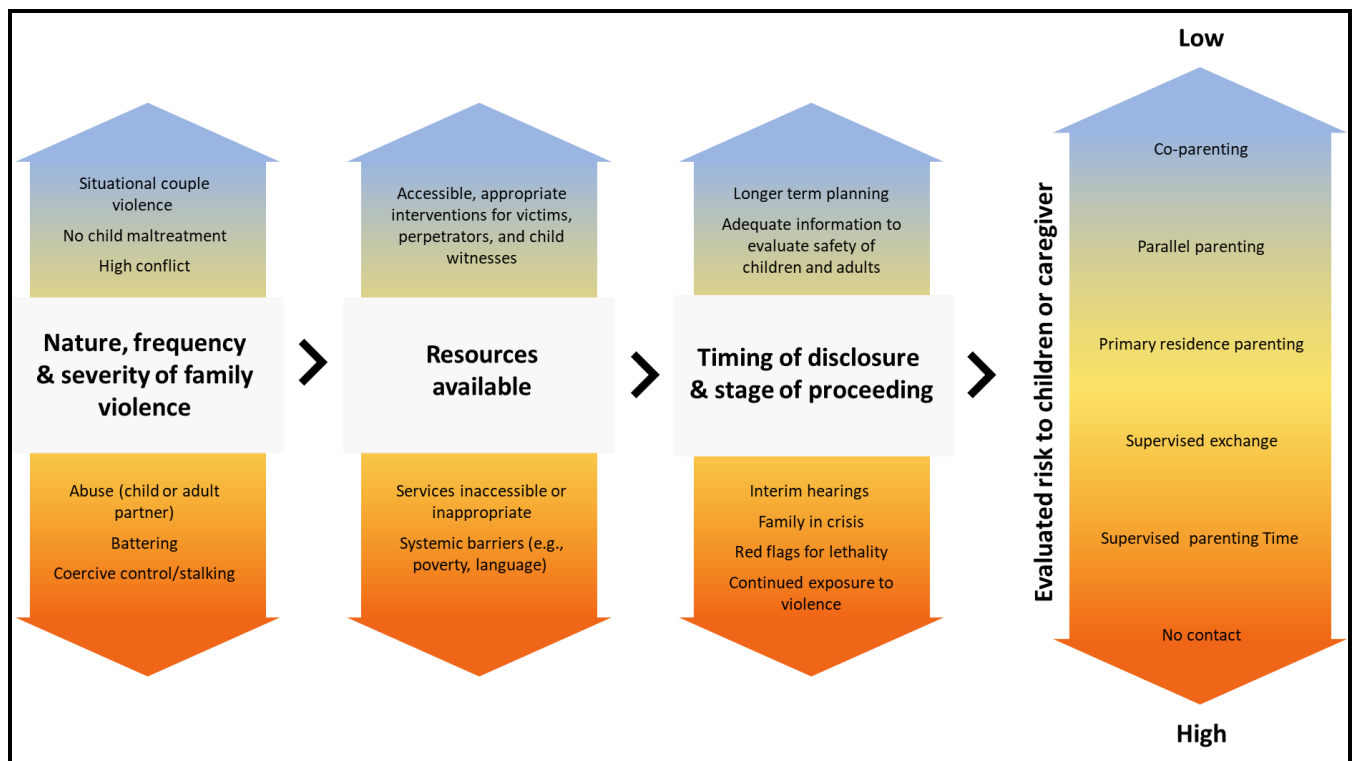
No contact or suspended parenting time

No Contact or Suspended Parenting Time is appropriate when a parent presents an ongoing risk of violence to the child or other parent, including emotional abuse to the child or threats of abduction. In these cases, the court may be required to suspend all parenting on a short or long-term basis.

Parenting arrangements after family violence as a function of history of violence, resources available, and timing of disclosure

The diagram below outlines the factors to consider in developing the most appropriate parenting arrangement based on the nature and severity of the family violence, the resources available to address the issues presented by the victim, abuser, and children, as well as the stage of the proceedings in the decision-making process. The possible parenting arrangements are shown on the far right in descending order of level of risk to children or to the parent who has been victimized by family violence. Co-parenting at the top would be consistent with a minimal or no history of family violence, and no contact at the bottom would be the opposite extreme for a case with a parent presenting as high risk. The other factors to consider in this framework – severity of family violence, resources available and stage of the proceedings - are all factors that must be considered as part of the level of risk of harm to children and parents. The orange factors at the bottom of each bar would raise concern about the level of risk.

Figure 1: Parenting arrangements after family violence as a function of history of violence, resources available and timing of disclosure



Supplement # 2: Coercive control as a form of family violence

Coercive control as a form of family violence

The federal *Divorce Act* and provincial and territorial family legislation recognize many forms of family violence. Family violence is now understood as more than just individual acts of physical and sexual abuse. It is essential to assess whether there has been a pattern of abuse over time that is aimed at maintaining power over an intimate partner and/or children through a variety of means such as threats, intimidation, and emotional, sexual, or financial abuse. Coercive control can have a profound impact on both adult victims and children exposed to this behaviour. Coercive control compromises the victim's independence, self-esteem, and safety.

What is coercive control?

...a pattern of abusive behaviours used to control or dominate a family member or intimate partner.

Coercive control may involve a range of behaviours during a relationship, and following separation, including the following:

- Intimidation, making threats to harm the victim or themselves (self-harm, suicide)
- Minimizing and denying the abuse
- Isolating the victim from friends, family, or work/school
- Emotional abuse such as constant criticism and degrading verbal abuse
- Economic abuse and control
- Stalking and monitoring

Coercive control may limit the victim's freedom and choices in many ways, and often has consequences for parenting arrangements. Some of the effects of coercive control include:

- Undermining the victim's sense of physical safety and/or creating a sense of fear for self or other loved ones
- Violating the victim's sense of emotional safety and/or creating a sense of serious distress and alarm for the emotional safety of self or other loved ones
- Creating conditions of subordination, dependency, or entrapment in a relationship
- Violating or removing the autonomy of the victim by controlling or greatly disrupting their daily activities
- Undermining a victim's credibility and making them doubt the reality of their experiences

Coercive control very often continues after separation:

- Abuser blames the victim for the violence
- Abuser minimizes their role in the violence
- Abuser uses the children by trying to turn them against the victim or getting them to spy on the victim
- Violence is ongoing
- Litigation abuse occurs including bullying that seeks to use up the victim's resources, failing to follow through on agreed-upon plans, making false claims that the victim abused or kidnapped their children, undermining victim's credibility (e.g., calling the victim a liar)

Findings of coercive control have significant implications for parenting arrangements. Critical considerations include the following:

- Reduce opportunities for ongoing abuse through well-structured decision-making and parenting time arrangements
- Develop and implement a safety plan
- Minimize ongoing contact between the parents
- Co-parenting is not appropriate in coercive control cases
- Seek supervision of parenting time where necessary
- Recognize litigation abuse as a form of ongoing coercive control

Coercive control is family violence

Coercive control is a common form of family violence. Understanding the nature and impact of coercive control is essential for family courts and legal professionals.

Coercive control involves repeated acts of humiliation, intimidation, isolation, exploitation and/or manipulation, frequently accompanied by acts of physical or sexual coercion. This form of abuse is **characterized by the ongoing way it removes the autonomy of the victim**, often entrapping them in the relationship, and causing distinct emotional, psychological, economic, and physical harms.

Coercive control is now recognized as a **form of family violence in the *Divorce Act*** and most provincial and territorial family laws.



Family violence is defined in the *Divorce Act* as any behaviour by a family member towards another family member that is:

- violent, or
- threatening, or
- a pattern of coercive and controlling behaviour, or that
- causes a family member to fear for their safety or the safety of another person

and in the case of a child, the direct or indirect exposure to such conduct.

Your client may feel:



- Afraid for themselves or loved ones
- Unsafe due to violations of no-contact orders
- Worn down and exhausted
- That they are second guessing themselves
- At the whim of their ex-partner
- Financially dependent on their ex-partner
- Unable to get away from their ex-partner
- Micro-managed by their ex-partner
- That their daily activities are disrupted
- Like they are “crazy”
- That they cannot trust their own decisions

Any of the impacts above may be signs of coercive control and family violence.

It is important that your client can share their experiences in court and receive the counselling they require from specialized services in the community. Their children may also require counselling to deal with the family violence they have been exposed to.

Perpetrators of coercive control need to acknowledge and take responsibility for their behaviour as a first step in getting help for themselves.

Lawyers should look for patterns of behaviour, know that violence is likely to continue following separation, and understand how it can impact the family law process and parenting arrangements.



Harassment

Aggressive pressure or intimidation, constant calling, or messaging. Using victim's identity against them, including racist and sexist slurs.



Isolating

Stopping victim from seeing family, friends, or work colleagues.



Technological abuse

Viewing text messages, emails, and social media without consent. Electronic stalking. Controlling phone access.



Financial abuse

Limiting access to money and controlling how it is spent, not paying child support, not providing financial information.



Blaming & degrading

Putting down, humiliating, using secrets against victim, sharing intimate photos, blaming victim for all family problems.

Coercive Control



Stalking

Following or making victim feel like their activities and whereabouts are being monitored at all times.



Physical & sexual abuse

Hitting, kicking, punching, injuring, pressuring into nonconsensual sex acts, forced pregnancy or abortion.



Gaslighting

Causing confusion, manipulating emotions, encouraging self-doubt, and making victim feel like they're going crazy.



Threatening

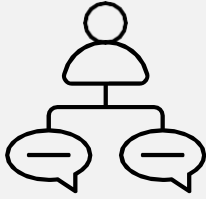
Threats, including from extended family to kill, hurt or ruin life of victim or their family, friends, or pets.



Emotional abuse

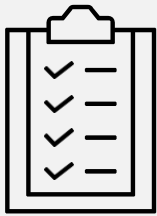
Constantly questioning or saying that victim is lying. Posting intimate images on social media.

Family violence with coercive control



Factors to consider when gathering evidence:

- History of the relationship and the forms of **abuse and threats that have been used to try to control** the victim and/or children
- Reports or observations of this conduct by third parties such as friends, relatives, co-workers, or professionals
- **Litigation abuse** as a continuing form of coercive control after the end of cohabitation
- Past and ongoing impact of abusive behaviours on children, on parenting, and on parent-child relationships



How to deal with it:

- Document to demonstrate patterns of conduct rather than isolated acts of abuse
- Recognize that exposure to coercive control is **harmful** to children
- Document harm to victim and/or children in terms of how the coercive control **affects** family members



Impact on parenting arrangements:

- Co-parenting and joint decision-making are **inappropriate** since they may allow continuation of the pattern of abuse
- Supervised parenting time or suspension of parental contact **may be required**
- A **minimum requirement** is a highly structured parenting arrangement with little flexibility to avoid ongoing disagreements and litigation